

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

TODD LOPEZ, Personal Representative
of the Estate of ERIN L. GROGAN,
KINDRA RISSMAN, CURT RISSMANN,
AND ADAM GROGAN

Plaintiffs,

vs.

No. CIV 20-453

FORREST HENRY, D.O., and
HIDALGO MEDICAL CENTER¹,

Defendants.

NOTICE OF REMOVAL OF ACTION

The United States of America, hereby gives notice to this Court of the removal of a civil action, Complaint for Wrongful Death and Resulting Damages, commenced in the First Judicial District Court, County of Santa Fe, State of New Mexico, Cause No. D-101-CV-2020-00136, entitled as above. This removal is pursuant to 42 U.S.C. § 233(c).

1. A civil action has been brought in the First Judicial District Court for the County of Santa Fe, State of New Mexico, alleging medical negligence resulting in wrongful death, and is now pending.

2. Attached to this Notice of Removal as **Exhibit 1** are copies of all pleadings filed in the First Judicial District Court for the County of Santa Fe, State of New Mexico in this action, which have been received by and are in the possession of the United States.

¹ Defendant *Hidalgo Medical Services* is incorrectly named in the state district court complaint as *Hidalgo Medical Center*.

3. The above-referenced New Mexico State Court action is properly subject to removal because the Bureau of Primary Health Care, in accordance with Section 224(h) of the Public Health Service Act, 42 U.S.C. 233(h), as amended by the Federally Supported Health Centers Assistance Acts of 1995 (P.L. 104-73), deemed Hidalgo Medical Services and its employees, including Defendant Forrest Henry, D.O, to be covered by the provisions of the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 *et seq.*, for damages for personal injury, including death, resulting from the performance of medical, surgical, dental, and related functions, and is exclusive of any other civil action or proceeding. Hidalgo Medical Services and its employees were deemed covered by the Act for all times relevant to the allegations contained in the Complaint for Wrongful Death and Resulting Damages.

4. Congress has provided, upon certification by the Attorney General or his designee, that the defendants were acting in the scope of their employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a state court shall be removed at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of Title 28 of the United States Code. 42 U.S.C. § 233(c); 28 U.S.C. §§ 1346(b), 2671 et seq.

5. Filed with this Notice of Removal as **Exhibit 2** is a Certification by John C. Anderson, United States Attorney for the District of New Mexico, that Defendants Hidalgo Medical Services and Forrest Henry, D.O. were deemed employees of the Public Health Service and that they was acting within the scope of their Federal employment at the time of the incident

giving rise to this suit. The authority to certify scope of office or employment has been delegated to the United States Attorney. *See* 28 C.F.R. § 15.3.

6. Defendants Hidalgo Medical Services and Forrest Henry, D.O. are covered by the provisions of the Federal Tort Claims Act. 42 U.S.C. § 233(a).

WHEREFORE, the United States gives notice that, pursuant to 42 U.S.C. § 233(c), Cause No. D-101-CV-2020-00136 in the First Judicial District Court for the County of Santa Fe, State of New Mexico, is removed to this Court.

Respectfully submitted,

JOHN C. ANDERSON
United States Attorney

Filed electronically May 12, 2020

/s/ Roberto D. Ortega

ROBERTO D. ORTEGA

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on May 12, 2020, I filed the foregoing pleading electronically through the CM/ECF system, and served the foregoing pleading on the following non-EM/ECF Participants via first class mail, postage prepaid addressed to:

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